

OFFICE OF THE COUNCIL

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CITY OF MIDDLEBURG HEIGHTS

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Clerk of Council
MARY ANN BEAUNE



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JOSEPH W. CATERINI
Ward 4
RAYMOND G. GUTTMANN

March 31, 1995

Secretary of the Commission
Rule making #8577
Federal Communications Commission
1919 M Street
Washington, D.C. 20554

Dear Sir or Madam:

The purpose of this letter is to protest the petition for rule making (#8577), labeled Request Amendment of the Commissions Rules to Preempt State and Local Regulation of Tower Siting for Commercial Mobile Service Providers, dated December 22, 1994, and tendered by the Cellular Telecommunications Industry Association, a consortium of sellers of mobile communication service and equipment. We understand that the period for public comment on this petition had been extended until March 6, 1995, however, we do appreciate your consideration of our comments.

In accordance with this protest, please find enclosed a copy of Resolution 1995-24 passed by Middleburg Heights City Council on March 28, 1995 entitled, A Resolution opposing the Cellular Telecommunications Industry Association's effort to force Middleburg Heights and all local governments to accept the installation of microwave towers without allowing regulation by local government.

We are strenuously opposed to the preemption of local and state authorities and ordinances for the siting of microwave towers, as requested by the Cellular Telecommunications Industry Associations petition to the Federal Communications Commission (FCC RM-8577).

Thank you for your attention in this matter and for considering our comments in your deliberations.

Sincerely,

Raymond G. Guttman
Councilman Raymond G. Guttman

Enclosure

No. of Copies rec'd
List ABCDE

CITY OF MIDDLEBURG HEIGHTS, OHIO

DELIVERED MAR 23 1995

RESOLUTION NO. 1995-24

INTRODUCED BY: Mr. Guttman Co-Sponsors: Mr. Caterini,
Mr. Budney, Mr. Sheppard, Mr. Oros, Mr. Ali, Mrs. Becker,
Mayor Starr

A RESOLUTION

OPPOSING THE CELLULAR TELECOMMUNICATIONS INDUSTRY
ASSOCIATION'S EFFORT TO FORCE MIDDLEBURG HEIGHTS AND ALL
LOCAL GOVERNMENTS TO ACCEPT THE INSTALLATION OF MICROWAVE
TOWERS WITHOUT ALLOWING REGULATION BY LOCAL GOVERNMENT

WHEREAS, the U.S. Congress enacted a law (Section 322 of the Communications Act) directing the Federal Communications Commission to make rules for the development of a mobile communications services infrastructure subject to federal regulation; and

WHEREAS, the FCC enacted rules pursuant to the Act but the Telecommunications Industry Association is not satisfied with the rules and has petitioned to FCC to enact an additional rule which would prohibit local governments from regulating activities such as the installation of microwave towers; and

WHEREAS, such a rule would allow the industry to install a large number of microwave towers within the city of Middleburg Heights without regard to Middleburg Heights regulations for size and placement of such towers; and

WHEREAS, Congress did not expressly authorize the Federal Communications Commission to override reasonable regulation by local governments; and

WHEREAS, the Cellular Telecommunications Industry Association (CTIA) admits Section 322 of the Communications Act does not expressly grant the FCC authority to override reasonable local regulations; and

WHEREAS, nevertheless CTIA argues that Congress intended that the FCC override local laws without saying so and based on CTIA's interpretation of Congress' unstated intention the FCC has authority to enact such a regulation; and

WHEREAS, the Ohio Constitution and Ohio Legislature have delegated to Charter Ohio cities the responsibility to regulate land use within each such city's borders; and

WHEREAS, CTIA has asked the Federal Communications Commission to adopt a rule which would remove the authority of a city to regulate the installation of a large number of microwave towers within the city; and

WHEREAS, the right of citizens, through their local government, to reasonably regulate the use of property should not be taken away on the basis of an FCC petitioner's self serving declaration of what Congress intended to say but did not.

CITY OF MIDDLEBURG HEIGHTS, OHIO

NO. _____

INTRODUCED BY: _____

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MIDDLEBURG HEIGHTS, STATE OF OHIO, AS FOLLOWS:

Section 1: That the Mayor and Council hereby urge the Federal Communications Commission to deny Petition Number RM-8577 filed by the Cellular Telecommunications Industry Association which would prohibit local regulation of wireless communication systems.

Section 2: Clerk of Council is hereby directed to send a certified copy of this Resolution to the Federal Communications Commission.

Section 3: It is hereby found and determined that all formal action of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Chapter 107 of the Middleburg Heights Code and Section 121.22 of the Ohio Revised Code.

PASSED: 3-28-95


PRESIDENT OF COUNCIL

ATTEST:


CLERK OF COUNCIL

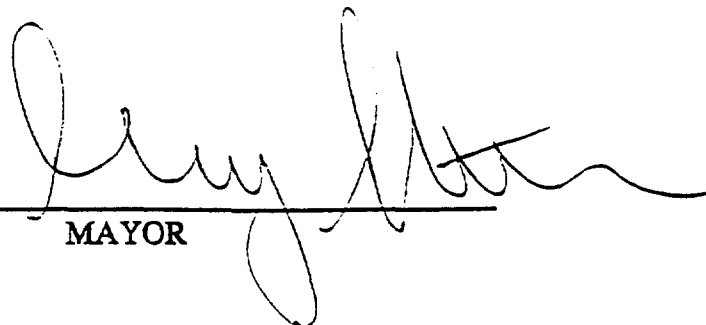
PRESENTED TO MAYOR: 3-29-95

APPROVED ON: 3/29/95

BUDNEY
OROS
SHEPPARD
ALI
BECKER
CATERINI
GUTTMANN

YEAS NAYS

<u>X</u>	_____
<u>ABSENT</u>	_____
<u>X</u>	_____
<u>X</u>	_____
<u>X</u>	_____
<u>X</u>	_____
<u>X</u>	_____


MAYOR

CERTIFICATE

I, M. Beaune, Clerk of Council of the City of
Middleburg Heights, Ohio, do hereby certify that
the foregoing is a true and accurate copy of
Res 1995-24 passed on the 28th day
March 1995 by said Council.

Mary Ann Beaune
Clerk of Council

I, M. Beaune, Clerk of
the Council of the City of Middleburg Heights, Ohio,
do hereby certify that Res 1995-24
adopted by the Council on the 28th day of
March, 1995, is a true and accurate copy of the
original as the same appears in the files of the
Clerk of Council. Witness my hand and the seal of the
City of Middleburg Heights, Ohio, this 31st day of
March, 1995.

Mary Ann Beaune
Clerk